IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1412 of 2006
with
SPECIAL CRIMINAL APPLICATION No. 1414 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAILESHKUMAR DHANJIBHAI GOHEL & 4 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR KETAN I ACHARYA for Applicant(s) : 1 - 5.MRS BK ACHARYA for Applicant(s) : 1 - 5.
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/08/2007

ORAL JUDGMENT

As both these petitions are between the same parties and raise common question of law and facts,

they are being disposed of by this common judgment and order.

2. Special Criminal Application No.1412 of 2006 is filed by the petitioner, - original accused under Article 226 of the Constitution r/w section 482 of Criminal Procedure Code to quash and set aside the complaint being criminal case No.321 of 2005 filed by the respondent No.2 herein, - original complainant before the ld. JMFC, Dhari.

Special Criminal Application No.1414 of 2006 is also filed by the petitioner, - original accused under Article 226 of the Constitution r/w section 482 of Criminal Procedure Code to quash and set aside the complaint being criminal case No.908 of 1999 filed by the respondent No.2 herein, - original complainant before the ld. JMFC, Dhari.

3. A criminal case No.32/05 is filed by the respondent No.2 herein against the petitioner in the Court of ld. JMFC, Dhari for the offence u/s 493,494, 495, 497 and 114 r/w 506(2) of the IPC and the ld. JMFC, Dhari has passed an order on 6-5-05 issuing the summons against the petitioner for the aforesaid offence and directed to register the criminal case.

A criminal case No.908/99 is also filed by the respondent No.2 herein against the petitioner in the Court of ld. JMFC, Dhari for the offence u/s 447, 504, 352, 506(1) and 114 of the IPC and the ld. JMFC, Dhari has passed an order on 29-9-99 issuing the summons upon the petitioner for the aforesaid offence.

Being aggrieved by the aforesaid two orders and the criminal cases, the respective petitioners have preferred the present petitions under Articles 226 and 227 of the Constitution of India r/w 482 of Criminal Procedure Code to quash the aforesaid complaints and the orders passed by the learned trial Court issuing the summons against the petitioners.

4. Shri KI Acharya, learned advocate appearing on behalf of the respective petitioners have submitted that they have not committed any offence as alleged in the aforesaid complaints and only with a view to harass the petitioners, the impugned complaints have been filed. It is submitted that the respondent No.2 is habitual in filing the false and concocted complaints and in fact no case is made out against the petitioners for the offences alleged in the complaints and therefore, it is requested to quash the aforesaid complaints.

5. Shri Mengdey, ld. APP while opposing the present petition has submitted that on bare reading of the averments and allegations in the complaint, it prima facie discloses cognizable offence under the IPC as alleged and considering the same, the learned trial Court has rightly issued the summons upon the petitioners. It is submitted that whether the petitioners have committed the offence or not is required to be considered at the time of trial and at the time of issuance of the summons, the learned trial Court is to be satisfied whether there is a

prima facie case made out for further trial or not and it is not required to be considered at that stage whether at the time of trial, the accused will be convicted or not. Therefore, it is requested to dismiss both the petitions.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. It is the contention of the respective petitioners that they have not committed any offence as alleged and that with a view to harass the petitioners, the impugned complaints have been filed. On considering the averments and allegations in the complaints/criminal cases in which the learned trial Court has issued the summons upon the respective petitioners, it prima facie discloses cognizable offence as alleged in the complaints and considering the averments and allegations in the complaint and the verification of the original complainant on oath, the learned trial Court has rightly issued the summons upon the petitioners herein. Whether the petitioners herein have committed the offence is required to be considered at the time of trial. At the time of issuance of summons, the learned trial Court is prima facie to be satisfied whether there is a prima facie case made out for further trial or not and is not required to be considered the matter further on merits and to come to the conclusion that whether the accused will be convicted or not. On bare reading of the complaints, the ld. Magistrate has not

committed any error in issuing the summons upon the petitioners. Under the circumstances, without further expressing any opinion on merits with regard to the offence as alleged, as the same may affect the either parties as the trial is yet to take place, this Court is not further considering the allegations on merits in detail. Suffice it to say that the ld. Magistrate has not committed any error in issuing the summons as the criminal case further requires trial. No case is made out to quash the impugned complaints and the orders passed by the ld. Magistrate issuing the summons upon the petitioners in exercise of powers u/s 482 of Criminal Procedure Code.

8. For the reasons stated above, both the petitions deserve dismissal and are accordingly dismissed. Rule discharged. Ad interim relief granted earlier stands vacated forthwith.

(M.R. Shah, J.)

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